

## Department of Energy

## § 709.10

Intelligence and Counterintelligence as to the recommendations.

(g) Not less than once every calendar year quarter, the responsible Program Manager must provide a list of all incumbent employees who are covered persons under paragraphs (b) and (c) of this section to the Director of the Office of Intelligence and Counterintelligence.

### § 709.4 Notification of a CI evaluation.

(a) If a polygraph examination is scheduled, DOE must notify the covered person, in accordance with § 709.21 of this part.

(b) Any job announcement or posting with respect to any position with access to classified information or materials protected under § 709.3(b) and (c) of this part should indicate that DOE may condition the selection of an individual for the position (709.3(b)) or retention in that position (709.3(b) and (c)) upon his or her successful completion of a CI evaluation, including a CI-scope polygraph examination.

(c) Advance notice will be provided to the affected Program Manager and laboratory/site/facility director of the covered persons who are included in any random examinations that are administered in accordance with provisions at § 709.3(c).

### § 709.5 Waiver of polygraph examination requirements.

(a) *General.* Upon a waiver request submitted under paragraph (b) of this section, DOE may waive the CI-scope polygraph examination under § 709.3 of this part for:

(1) Any covered person based upon certification from another Federal agency that the covered person has successfully completed a full scope or CI-scope polygraph examination administered within the previous five years;

(2) Any covered person who is being treated for a medical or psychological condition that, based upon consultation with the covered person and appropriate medical personnel, would preclude the covered person from being tested; or

(3) Any covered person in the interest of national security.

(b) *Submission of Waiver Requests.* A covered person may submit a request for waiver under this section, and the request shall assert the basis for the waiver sought and shall be submitted, in writing, to the Director, Office of Intelligence and Counterintelligence, at the following address: U.S. Department of Energy, Attn: Director, Office of Intelligence and Counterintelligence, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *Disposition of Waiver Requests.* The Director, Office of Intelligence and Counterintelligence, shall issue a written decision on a request for waiver prior to the administration of a polygraph examination. The Director shall obtain the concurrence of the Secretary in his or her decision on a request for waiver under § 709.5(a)(3) and shall obtain the concurrence of the Administrator of NNSA in a decision on a waiver request from an NNSA covered person under § 709.5(a)(1) and § 709.5(a)(2). Notification of approval of a waiver request will contain information regarding the duration of the waiver and any other relevant information. Notification of the denial of a waiver request will state the basis for the denial and state that the covered person may request reconsideration of the denial by the Secretary under § 709.5(d).

(d) *Reconsideration Rights.* If a waiver is denied, the covered person may file with the Secretary a request for reconsideration of the denial within 30 days of receipt of the decision, and the Secretary's decision will be issued prior to the administration of a polygraph examination.

## Subpart B—CI Evaluation Protocols and Protection of National Security

### § 709.10 Scope of a counterintelligence evaluation.

A counterintelligence evaluation consists of a counterintelligence-based review of the covered person's personnel security file and review of other relevant information available to DOE in accordance with applicable guidelines and authorities. As provided in § 709.3(b), DOE also may require a CI-

scope polygraph examination. As provided for in § 709.3(c), a CI evaluation, if conducted on a random basis, will include a CI-scope polygraph examination. As set forth in § 709.15(b) and (c) of this part, a counterintelligence evaluation may also include other pertinent measures to address and resolve counterintelligence issues in accordance with Executive Order 12333, the DOE “Procedures for Intelligence Activities,” and other relevant laws, guidelines and authorities, as applicable.

**§ 709.11 Topics within the scope of a polygraph examination.**

(a) DOE may ask questions in a specific incident polygraph examination that are appropriate for a CI-scope examination or that are relevant to the counterintelligence concerns with a defined foreign nexus raised by the specific incident.

(b) A CI-scope polygraph examination is limited to topics concerning the covered person’s involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, and deliberate damage to or malicious misuse of a U.S. government information or defense system.

(c) DOE may not ask questions that:

- (1) Probe a covered person’s thoughts or beliefs;
- (2) Concern conduct that has no CI implication with a defined foreign nexus; or
- (3) Concern conduct that has no direct relevance to a CI evaluation.

**§ 709.12 Defining polygraph examination questions.**

The examiner determines the exact wording of the polygraph questions based on the examiner’s pretest interview of the covered person, the covered person’s understanding of the questions, established test question procedures from the Department of Defense Polygraph Institute, and other input from the covered person.

**§ 709.13 Implications of refusal to take a polygraph examination.**

(a) Subject to § 709.14 of this part, a covered person may refuse to take a polygraph examination pursuant to § 709.3 of this part, and a covered person

being examined may terminate the examination at any time.

(b) If a covered person terminates a polygraph examination prior to the completion of the examination, DOE may treat that termination as a refusal to complete a CI evaluation under § 709.14 of this part.

**§ 709.14 Consequences of a refusal to complete a CI evaluation including a polygraph examination.**

(a) If a covered person is an applicant for employment or assignment or a potential detailee or assignee with regard to an identified position and the covered person refuses to complete a CI evaluation including a polygraph examination required by this part as an initial condition of access, DOE and its contractors must refuse to employ, assign, or detail that covered person with regard to the identified position.

(b) If a covered person is an incumbent employee in an identified position subject to a CI evaluation including a polygraph examination under § 709.3(b), (c), or (d), and the covered person refuses to complete a CI evaluation, DOE and its contractors must deny that covered person access to classified information and materials protected under § 709.3(b) and (c) and may take other actions consistent with the denial of access, including administrative review of access authorization under 10 CFR part 710. If the covered person is a DOE employee, DOE may reassign or realign the DOE employee’s duties, or take other action, consistent with that denial of access and applicable personnel regulations.

(c) If a DOE employee refuses to take a CI polygraph examination, DOE may not record the fact of that refusal in the employee’s personnel file.

**§ 709.15 Processing counterintelligence evaluation results.**

(a) If the reviews under § 709.10 or a polygraph examination present unresolved foreign nexus issues that raise significant questions about the covered person’s access to classified information or materials protected under § 709.3 of this part that justified the counterintelligence evaluation, DOE may undertake a more comprehensive